STATE OF MICHIGAN

IN THE SUPREME COURT

HIGHLAND-HOWELL DEVELOPMENT CO., LLC,

Appellant,

v

TOWNSHIP OF MARION,

Appellee.

_____/

Supreme Court
Docket No. 130698

Court of Appeals
Docket No. 262437

Michigan Tax Tribunal
No. 307906

130698

AMICUS CURIAE BRIEF OF THE MICHIGAN TOWNSHIPS ASSOCIATION

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INTRODUCTION

The Court's June 30, 2006 Order directs the Court Clerk to schedule oral argument on whether to grant Appellant's application for leave to appeal or take other peremptory action, and invites the Michigan Townships Association to file an amicus curiae brief on three specific issues to be addressed by the primary parties at oral argument.

The Michigan Townships Association is honored by the Court's unsolicited invitation to file an amicus curiae brief and gratefully accepts this invitation. Consistent with the Court's Order we will confine this brief to the three issues on which the Court has invited our assistance.

I.

ISSUE 1--- THE MANNER IN WHICH A PROPERTY OWNER SUBJECT TO SPECIAL ASSESSMENT FOR A PLANNED IMPROVEMENT MAY SEEK RELIEF WHEN THERE IS A SUBSEQUENT CHANGE TO THE PLAN THAT MATERIALLY AFFECTS THE BENEFIT TO THE OWNER'S PROPERTY.

At the outset we must candidly confess that addressing this issue within the context of the facts of this case presents a bit of a quandary. The Court has specifically requested this issue be addressed, so address it we will. However, we believe our professional responsibilities require us to forthrightly challenge the applicability of this issue in the context of this case, and the validity of various assumptions or premises on which argument in support of Appellant's position is predicated.

In this part of our brief we will therefore initially respond to the issue, directly, and then explore the flaws reflected in the statement of the issue itself and the advocacy on this issue by Appellant and amicus curiae aligned with Appellant's position.

A. The History Of This Controversy Illustrates Opportunities For A Property Owner Subject To A Special Assessment To Seek Judicial Relief When There Is A Subsequent Change In The Plans For The Improvement

The most direct response to this issue is provided by the history of this controversy itself. Appellant has had an opportunity to seek and did seek judicial relief relating to the change in the plans for the improvement in the Circuit Court and in the Michigan Tax Tribunal.

This Court has on various occasions recognized that the exclusive and original subject matter jurisdiction of the Michigan Tax Tribunal (MTT or Tax Tribunal) relating to special assessments established by MCL 205.731 does not affect circuit court jurisdiction on some issues arising out of special assessment projects. The Court's most recent such pronouncement of course occurred within the context of this very controversy, when the Court held that common law and contract claims are not within the exclusive and original jurisdiction of the Tax Tribunal as defined in MCL 205.731, and thus remanded to the circuit court Appellant's claims against Marion Township for damages resulting from an alleged breached promise to construct the sewer line as proposed by the original plans for the project. Highland-Howell Development Co., LLC v Township of Marion, 469 Mich 673 (2004)[1].

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[1] Article 6, Section 13 of the Michigan Constitution allocates to the circuit court "original jurisdiction in all matters not provided by law"; and other specific jurisdiction and powers. Various statutory provisions articulate the subject matter jurisdiction of the circuit court pursuant to this constitutional grant, including MCL 600.605 which specifies the circuit courts have "original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state".

The legislature exercised the "except" aspect of MCL 600.605 in 1973 when it enacted the Tax Tribunal Act (MCL 205.701 et seq.) This legislation created the Tax Tribunal as a "quasi-judicial" agency (MCL 205.721), and accords the Tribunal "exclusive and original jurisdiction over, as relevant to this litigation, "a proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to . . . special assessments . . .under property tax laws". MCL 205.731. This Court has determined that special assessments levied against property owners for public improvements to realty which especially benefit their property are special assessments "under property tax laws" for purposes of

Appellant therefore did have an opportunity to seek relief predicated on the changed plans for the sewer improvement. Moreover, Appellant actually did pursue such an action, pursuant to its claims seeking monetary damages for breach of contract and promissory estoppel in the Livingston County Circuit Court. Highland-Howell Development Group, LLC v Township of Marion, Case No. 98-16767-CZ.

Appellant similarly had an opportunity to seek relief for claims requesting non-monetary relief (build the sewer line as per the original plans) and/or monetary damages predicated on other legal theories, and Appellant either did seek such relief or could have.

Any resulting determination that Appellant's claims did not have a sufficient basis to prevail does not diminish the reality of Appellant's right to seek relief in the Circuit Court (or the MTT) based on a change in the plans for the sewer project. The considerable effort by Appellant and various supporting amicus curiae to posture this case as involving a beleaguered property owner left with no opportunity to seek relief predicated on the change in the sewer project plans is especially disingenuous considering the extensive history of litigation by Appellant raising such claims in the Circuit Court and/or Tax Tribunal.

Having failed to yet find an audience receptive to its claims based on existing statutory and case law, Appellant appeals to this Court with an argument which can only prevail if the Court ignores or judicially amends provisions of the Tax Tribunal Act or the

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this provision of the Tax Tribunal Act. Wikman v City of Novi, 413 Mich 617 (1982). MCL 205.735 further refines the prerequisites of MTT jurisdiction over special assessment disputes.

Public Improvements Act[2] (Act 188) relating to jurisdiction, protest and timeliness; reads into Act 188 provisions and "rights" that the legislature did not include in the law; or essentially finds the primary law authorizing various township improvements by special assessments to be unconstitutional for want of certain due process "rights" which can only be found to apply here by distorting or otherwise misapplying various case precedents. The next segments of this brief on the first issue will elaborate on the perilous jurisprudential implications of these arguments, and the inapplicability of the statement of the issue to the facts of this case.

B. The Change in the Plans Did Not Materially Affect the "Benefit" from the "Improvement" Petitioner was Entitled to Receive and Did Receive.

The statement of the first issue presumes a fact scenario where a change in plans has a "material affect" on the improvement for which the property is specially assessed. With all due respect, that is not the fact scenario in the present case.

It is an undeniable fact that the change in the plans for the sewer project had no affect on either the availability[3] of the sewer improvement to the subject property or the amount of the special assessment for such improvement. The "improvement" authorized by the Township Board pursuant to the Act---sewer---was constructed and made available to the subject property. Appellant has received exactly what it had a right to receive for the special assessment on the subject property.

Some of the argument submitted to the Court by various advocates aligned with Appellant is amazingly premised on the notion that the change in the project plans

[2] Respectively, 1973 Public Act 186, as amended (MCL 205.701) et seq., and 1954 Public Act 188, as amended (MCL 41.721 et seq.).

[3] It is settled law that the benefit of any given public improvement is measured by its available potential, not the immediate use to which it can be put. Stybel Plumbing, Inc. v City of Oak Park, 40 Mich App 108 (1972).

actually eliminated the improvement to the property. For example, the amicus curiae brief of the Real Property Section of the State Bar of Michigan includes argument in the specific context of "the township's unilateral action to eliminate the intended improvement to the property" (page 9, underlining added for emphasis). The amicus curiae brief of the Michigan Chamber of Commerce fashions the question before this Court as whether applicable statutory and constitutional provisions "permit the Township to eliminate the benefit for which the property owner is assessed but still be required to pay" (page 1, underlining added for emphasis).

Such statements reflect, at best, a fundamental misunderstanding of the facts of this case and the scheme of Act 188; or, at worst, a deliberate attempt to induce granting the application for leave based on a claimed fact situation that does not exist in this case.

C. Act 188 Explicitly Distinguishes Between the "Improvement" and "Plans" for the Improvement, and Does Not Provide For a Noticed Hearing on "Plans" or a Right To Object to the Original or Changed "Plans".

Appellant's argument is primarily predicated on a right to a noticed hearing and to object to the approved plans for the improvement, whether originally or as may be changed. The legislature provided no such rights in Act 188. Appellant and amicus curiae aligned with Appellant are only able to claim or infer the existence of such "rights" by misrepresenting (affirmatively or by omission) what Act 188 actually says, or by simply asserting or presuming such "rights" to exist. A review of various provisions of Act 188 will disclose the legal flaws in Appellant's position.

Act 188 clearly and repeatedly distinguishes between the public "improvement", and the "plans" for the improvement, and does not give the owner of property included

in a special assessment district any legal right to receive the improvement pursuant to a specific plan, and only that plan.

The preamble of the Act generally states the purpose of the Act is to provide for the making of certain "improvements" by Townships; and, among other things, "to provide for assessing the whole or a part of the cost of improvements against property benefited". Consistent with this purpose Section 1 of the Act expressly empowers the Township Board to make an "improvement" named in the Act[4], and to determine that the cost of the "improvement" shall be defrayed by "special assessment against the property especially benefited by the improvement". MCL 41.721 (underlining added for emphasis). Notably, the Act does not refer to a special assessment against property benefited by the plans.

Section 3 of the Act addresses petitions for the "improvement", and objections to the "improvement". MCL 41.723. Under Section 4 of the Act, if the Township Board decides to proceed with the "improvement", the Board must cause to be prepared "plans" for the "improvement", and an "estimate of the costs" of the "improvement". If upon receipt of such plans and estimate of the costs of the "improvement", the Township Board still desires to proceed with the "improvement", the Board tentatively declares its intention to make the "improvement", and tentatively designates the special assessment district against which the costs of the "improvement" or a designated part of the "improvement" is to be assessed. MCL 41.724(1).

The Township Board then holds a hearing preceded by notice. The purpose of the hearing as established by Section 4 of Act 188 is three-fold: (1) to hear objections to

[4] Section 2 of the Act includes a lengthy list of such authorized "improvements", including at subsection (1)(a) the construction of storm or sanitary sewers. MCL 41.722.

the "petition", where a petition was required; (2) to hear objections to the "improvement"; and (3) to hear objections to the proposed "special assessment district". MCL 41.724(2) and (3). While the notice for this hearing is required to state that the "plans" describing the "improvement" and the location of the "improvement" and cost "estimates" are on file with the Township for public examination, the Act itself clearly specifies only a right of objection to the three above-stated matters. The Act does not create any right of objection to the specific "plans" for the improvement.

The legislature's pervasive use of the word "improvement", and separate references to the "plans" for the "improvement" and the estimated "cost" of the "improvement", discloses that the legislature did not intend these words to mean the same thing. This important distinction carries through the rest of the process prescribed by the Act.

For example, if, after the hearing described above, the Township Board desires to proceed with the "improvement", Section 5 of Act 188 requires the Board to approve by resolution the completion of the "improvement", the "plans", and the "estimate of cost", as originally presented or as revised, corrected, amended, or changed; the sufficiency of the petition for the "improvement" (where required); and the creation of the special assessment district and its term of existence. MCL 41.725.

Section 5 of the Act expressly provides for a challenge to the sufficiency of the "petition" through timely action brought in a court of competent jurisdiction, but the legislature similarly made no provision for a challenge to any of the other aspects of the Board resolution, including the "improvement" itself, the estimate of costs, or the "plans". MCL 41.725

If the Township Board goes on with the special assessment process and confirms a special assessment roll for the costs of the improvement after a further hearing, Section 6 of the Act provides for a challenge to such confirmed "special assessment roll" through timely legal action. MCL 41.726. Here again, the Act provides no authorization for a legal challenge to the "plans" for the improvement.

The Court will please note that in the scheme of Act 188 the legislature twice authorized the Township Board to change the "plans" without any reference to a hearing thereon. First, Section 4(3) states "(t)he township board may revise, correct, amend, or change the plans, estimate of cost or special assessment district". MCL 41.724(3). If the Township Board desires to change the "special assessment district" by adding property, Section 4(4) specifically requires a new hearing with notice as provided by Section 4a. MCL 41.724(4). Similarly, if the actual cost exceeds the estimated cost by 10% or more, Section 4(4) also requires a new hearing with notice as provided by Section 4a. MCL 41.724(4).

Thus, while specifically requiring the Township Board to hold a further noticed hearing in the event of a revision, correction, amendment or change in the special assessment district or the estimate of costs as addressed in MCL 41.724(3), the legislature specifically did not require any such hearing with respect to revising, correcting, amending, or changing the "plans".

The second reference to plan changes in Act 188 is of course in Section 5(1), which addresses the required resolution form of the Township Board's approval of the plans and estimate of costs, whether as originally presented or as revised, corrected,

amended, or changed. This Section of Act 188 also does not require any hearing on such a resolution. MCL 41.725(1).

This dissection of the Act makes clear that the "plans" for the improvement are not the same as the "improvement" itself. The legislature expressly provided in Act 188 for a hearing on specific matters, with notice of such a hearing, and opportunities to challenge various aspects of the special assessment process, but conferred no right to a hearing on the "plans" for the improvement, notice of a hearing on "plans", or any right to object to such "plans". The legislature left the details of the "plans" for the improvement to the discretion of the Township Board, and thus similarly conferred no right to hearing on a Township Board resolution approving plans, whether originally presented or as revised, corrected, amended, or changed.

II.

ISSUE 2---WHETHER THE TOWNSHIP'S MAY 13, 2004 RESOLUTION RATIFYING CERTAIN PLAN CHANGES IS TANTAMOUNT TO A RESOLUTION APPROVING PLAN CHANGES UNDER MCL 41.725(1)(b).

When the Township revised the sewer improvement plans in 1997 it did not approve the changes to the plans by a formal "resolution" of the Township Board. The Tax Tribunal opined that the requirement of MCL 41.725 to approve plans for the improvement by resolution still applies if changes to the plans are made after confirmation of the special assessment roll. (See Township's Appendix, Exhibit 2, page 21, January 27, 2004 Proposed Opinion And Judgment and March 19, 2004 Order in MTT Docket No. 261431.)

On May 13, 2004 the Township Board adopted a resolution formally ratifying the changes to the improvement plans tacitly approved by the Board and actually

implemented several years previously. Appellee Township has concluded in its Supplement Brief dated August 10, 2006 that this resolution is tantamount to a resolution approving plan changes under MCL 41.725. We agree, and believe any contrary conclusion necessarily contradicts the plain language of the statute.

The issue here is a very simple issue concerning the form of the Township Board's approval of the plans for the improvement. MCL 41.725(1) expressly states "the township board shall approve or determine by resolution all of the following: . . . (b) the plans and estimate of cost as originally presented or as revised, corrected, amended, or changed . . ." (underlining added for emphasis). The legislature has spoken with clear language here, and required the form of the approval of plans for the improvement to be "by resolution", not only with regard to the plans originally presented, but also "as revised, corrected, amended, or changed". The Township Board's May 13, 2004 resolution ratifying the changed plans previously implemented must therefore be considered a required resolution under MCL 41.725.

Appellant reaches a different conclusion, but only by relying on "procedural defects" in procedures that are not applicable here to begin with. For example, Appellants criticize the sufficiency of the May 13, 2004 resolution because "there is no evidence that (it) was passed at a public hearing held in conformance with Section 4 of Act 188". Appellant's Supplemental Brief dated August 11, 2006, page 15 (underlining added for emphasis). However, the legislature did not require such a resolution to be passed at a public hearing. Appellants must know full well that MCL 41.725 provides for the adoption of such a resolution "after the hearing provided for in section 4" of Act 188 (underlining added for emphasis).

The May 13, 2004 resolution was indisputably passed after the Section 4 hearing held a considerable time previously. The Court will please again note here, as discussed in more detail with respect to the first issue, that the hearing "provided for in section 4" is to "hear any objections to the petition, if a petition is required, to the improvement, and to the special assessment district". MCL 41.724(2) (underlining added for emphasis). Neither Section 4 nor any other section of Act 188 provides for any "hearing" on the "plans", whether original or revised, or any resolution approving the "plans", and any assertion or implication to the contrary by Appellant is simply not supported by the statute.

Appellant's claim of a procedural defect relating to notice of such a hearing is similarly unsupportable in the law itself. MCL 41.724 requires notice of the hearing under Section 4 to be given as provided in Section 4a (MCL 41.724a). However, since the legislature has established the purpose of such a hearing to consider objections to the "petition", to the "improvement", and to the "special assessment district", but did not establish such hearing on the "plans" for the improvement, it is axiomatic that the Township was not required to give notice for a hearing which it was not holding, or required to hold.

The most egregious of the false "procedural defects" raised by Appellant is the assertion that the May 13, 2004 resolution "met none of Section 6's requirements". Appellant's Supplemental Brief, page 16. Section 6 of Act 188 addresses the proposed special assessment roll, the hearing thereon, and confirmation of the roll. The May 13, 2004 resolution of course met none of the requirements of Section 6, because that resolution had absolutely nothing whatsoever to do with the assessment roll. The

resolution merely formally acknowledged, approved and ratified the changes in the plans incorporated within the various project documents created and maintained by the project's construction contractors, and as reflected in the configuration of the sanitary sewer system as actually constructed. Appellee's Appendix, Exhibit 4.

Nothing in that resolution in any way affected or otherwise related to the special assessment roll long-previously confirmed by the Township Board pursuant to the proper procedures. In the language of MCL 205.731(a), that resolution was not "relating to" a "special assessment".

Finally, in an attempt to support its bogus laundry list of so-called "procedural defects", Appellant raises Section 13 of Act 188, and also a 1908 decision of this Court. The court case, Thayer Lumber Co. v City of Muskegon, 152 Mich 59 (1908), is of no value to the Court in the present case, for at least two primary reasons. First, the case arises under a completely different legal framework involving provisions of a city charter, not Act 188. Indeed, Act 188 did not even exist until nearly 50 years after the case was decided. Second, in that case the defects included changing the boundaries of the special assessment district and adding more properties to the district without giving the proper notice of same in compliance with the city's own charter.

Section 13 of Act 188 has nothing to do with the present case to date. By its plain terms this section of the law only applies "whenever any special assessment shall, in the opinion of the township board, be invalid by reason of irregularities or informalities in the proceedings, or if any court of competent jurisdiction shall adjudge such assessment to be illegal". MCL 41.733 (underlining added for emphasis).

There is nothing in the record of this controversy to even suggest that the Township Board at any time formed an opinion that the special assessment on the subject property was "invalid", and certainly no Court has adjudged that special assessment to be "illegal". This statutory provision is thus of no import to the adjudication of any issue involved with this case at this time.

III.

ISSUE 3---IF THE MAY 13, 2004 RESOLUTION IS TANTAMOUNT TO A RESOLUTION APPROVING PLAN CHANGES UNDER MCL 41.725(1)(b), IS PETITIONER ENTITLED TO SEEK RELIEF UNDER MCL 41.726(3).

While we think all three of the issues raised by the Court have been made needlessly complicated by the parties and various amicus curiae, this third issue is especially amenable to a simple response and supporting analysis. MCL 41.726(3) states as follows in its entirety:

> "If a special assessment roll is confirmed, the township clerk shall endorse on the assessment roll the date of the confirmation. After the confirmation of the special assessment roll, all assessments on that assessment roll shall be final and conclusive unless an action contesting an assessment is filed in a court of competent jurisdiction within 30 days after the date of confirmation" (underlining added for emphasis).

In this case it is evidently an undisputed fact that the assessment which Appellant desired to contest in the MTT is the assessment on the special assessment roll confirmed by the Township Board on December 2, 1996. Based on the plain language of the statute it is also indisputably clear that all assessments on that assessment roll were final and conclusive unless an action contesting an assessment thereon was filed within 30 days after the date of confirmation, which would have been on or about January 2, 1997. Appellant did not initially file an action contesting the

special assessment on that assessment roll until July 21, 1998. Appellant therefore attempted to contest the special assessment on its property over one and a half years after the assessment on that assessment roll became statutorily final and conclusive.

Appellant and amicus curiae aligned with Appellant seek to avoid the obvious preclusive implications of the clear and unambiguous language of MCL 41.726(3) by characterizing the May 13, 2004 resolution as itself a "confirmation" of the public improvement project. This use of the word "confirmation" in the context of the May 13, 2004 resolution is a reprehensible attempt to deceive the Court by bringing within the ambit of MCL 41.726(3) a resolution which has absolutely nothing to do with the subject of that provision of Act 188.

MCL 41.726(3) relates only to the special assessment roll, and the word "confirmation" is used therein only in the context of confirmation of the special assessment roll. The May 13, 2004 resolution addresses only the changed "plans" for the sewer improvement project as actually built. The resolution had nothing to do with the special assessment roll, whether by "confirmation" or otherwise. By its terms MCL 41.726(3) has nothing whatsoever to do with the subject of the resolution.

Accordingly, the simple and correct response to this issue is "no"---Appellant is not entitled to seek relief under MCL 41.726(3) based on the May 13, 2004 resolution that did not confirm or otherwise have anything to do with a special assessment roll.

The law is well established in Michigan that statutes governing tax appeal petitions and the time requirements for filing appeal petitions are jurisdictional in nature, and an untimely filing deprives the Tax Tribunal of jurisdiction to consider the petition

and it is therefore properly dismissed. Szymanski v City of Westland, 420 Mich 301 (1984); W.A. Foote Memorial Hospital v City of Jackson, 262 Mich App 333 (2004).

In Szymanski the property owners conceded that their petition was not filed in the Tax Tribunal within 30 days after the final confirmation of the assessments, as required by MCL 205.735, but maintained that the Tribunal should nevertheless take jurisdiction of the matter because they claimed that the assessments constituted an unconstitutional taking of their property without just compensation. Here was this Court's unequivocal response in Szymanski with respect to the implications of a constitutionally-premised claim and the statutory filing requirements:

> " . . . the plaintiffs continue to argue that the 30-day rule found in MCL 205.735(2) (former MSA citation omitted) is not applicable to them because of the soundness of their claim on the merits. Of course, simply because the plaintiffs' underlying claim has a constitutional dimension, and may even be meritorious, does not excuse the plaintiffs' failure to assert their claim within the applicable statutory period of limitation." 420 Mich at 303.

In deciding Szymanski this Court noted its prior decision in Wikman v City of Novi 413 Mich 617 (1982) holding that the 30-day filing limit imposed by MCL 205.735 applies only when "a specific provision providing a longer period of limitation does not exist". 413 Mich at 653. In Wikman the Court determined there was such a specific provision providing a longer period of limitation---a 60-day period as provided by the City charter and ordinance. Since the property owners in Szymanski pointed to no provision containing a longer period of limitations than that found in the Tax Tribunal Act, this Court concluded on the basis of the "plain language" of MCL 205.735 and the rule announced in Wikman "that the Tax Tribunal was without jurisdiction to consider the plaintiffs' petition and therefore correctly dismissed it". 420 Mich at 305.

As with the property owners in Szymanski, Appellants here point to no provision of law containing a longer period of limitation than that found in the Tax Tribunal Act. Thus, as with the property owners in Szymanski, simply because the Appellants "underlying claim has a constitutional dimension" does not excuse their failure to assert their claim within the applicable statutory period of limitation, even if the claim may be meritorious, which it is not.

Appellants and amicus curiae aligned with the Appellant recognize the implications of this precedent---dismissal---and therefore devote considerable attention to the contention that due process requires the protest and timing requirements of the Tax Tribunal Act and Act 188 be waived. This contention is generally advanced in the context of the assumed premise that the Township failed to comply with notice procedures of Act 188 with respect to the changed plans. The case law cited by Appellant and other amicus curiae also contemplates circumstances involving a failure to follow statutory procedures, especially statutory notice procedures.

For example, in the case central to Appellant's argument, W&E Burnside, Inc. v Bangor Township, 402 Mich 9501 (1978) the Township had failed to send to the taxpayer a statutorily required notice of a property tax assessment increase.

Appellant recognizes that other very recent cases determine the time limits in the Tax Tribunal Act cannot be waived even if a property owner received insufficient notice of a tax assessment or a change in a tax assessment. For example, Pacific Properties, LLC v Township of Shelby, unpublished per curiam of the Court of Appeals, decided March 1, 2005 (Docket No. 249945).

Appellant cleverly attempts to posit the present case as an opportunity to resolve what Appellant believes to be conflicting decisions. The Court has no occasion to accept this invitation, whether as a basis to grant Appellant's application for leave, or to adjudicate the case if leave is granted, because this case does not involve a failure to send Appellant any statutorily required notice regarding the changed plans for the improvement.

Appellant itself explicitly recognizes that:

> "if a township changes public improvement plans in conformity with Act 188 procedures and creates no notice defect, the protest and timing requirements will not be excused in any special assessment challenge initiated at the MTT because the property owner has received due process". Appellant's Supplemental Brief, page 8 (underlining added for emphasis)."

This is a correct statement of the law, and is applicable here because there was no statutory notice defect relating to the change in the plans. Indeed, there could not have been any such statutory notice defect, because Act 188 did not require the Township to send any notice to Appellant regarding the changed plans for the improvement, as previously discussed herein in detail.

Appellant and the amicus curiae aligned with Appellant are therefore asking this Court to simply ignore the jurisdictional protest and timing requirements explicitly established by the legislature in the Tax Tribunal Act and Act 188, or to override those requirements by a wave of the magic "due process wand" in circumstances not supported by any applicable case law. Any such decision would be nothing less than a usurpation of legislative power the People have constitutionally assigned to the legislative branch of government, and prohibited the exercise thereof by another branch. Michigan Constitution, Article IV, Section 1, Article III, Section 2.

IV. CONCLUDING COMMENTS

Appellant and especially the amicus curiae aligned with Appellant would have the court believe this case involves a property owner victimized by a special assessment project run amok, leaving the property owner with a special assessment bill, but no benefit, and without any legal remedy. To be blunt, they would like the court to see this as a "property rights" case that may appeal to what they perceive to be the philosophical orientation of the court at this time.

Amicus Curiae Michigan Townships Association is concededly appealing to what we perceive to be this Court's fundamental commitment to the "separation of powers" established by the Michigan Constitution.

We think we have two advantages here: the facts, and the law. The Township has provided the subject property the public improvement---sewer---for which the property owner was assessed a proportional share of the total costs of the improvement project. The Township Board did exercise its legislature discretion pursuant to Act 188 to change the specific plans for the manner of providing the sewer improvement to the subject property, but in doing so the Township did not fail to give any notice to the property owner required by Act 188 or any other applicable law.

The law has afforded the property owner an opportunity to seek relief against the Township, and the property owner has pursued those opportunities in Circuit Court and the Michigan Tax Tribunal. The property owner sees the failure of those efforts as evidence of no remedy for a "wrong". More accurately, those efforts did not culminate in the remedy desired by the property owner because there was no "wrong" of sufficient significance to merit the remedy desired by the property owner.

While the controversy between the two parties certainly has a lengthy history, and some of the legal issues raised by the parties are somewhat complicated, this case really comes down to something quite simple: the property owner is asking this Court to use the power of the judicial branch of government to establish statutory law differently than what was enacted by the legislature, or to use the broad umbrella of constitutional "due process" as a cover to create new "rights" out of thin air.

We hope our candid analysis and comments will assist this Court in rendering a ruling that is legally sound and continues this Court's established respect for the prerogative of the legislative branch of our state government relative to the powers of the judiciary. We urge the Court to deny Appellant's application for leave.

Respectfully submitted,

Date: 10-9-06

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STATE OF MICHIGAN

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PROOF OF SERVICE PERTAINING TO BRIEF OF AMICUS CURIAE MICHIGAN TOWNSHIPS ASSOCIATION

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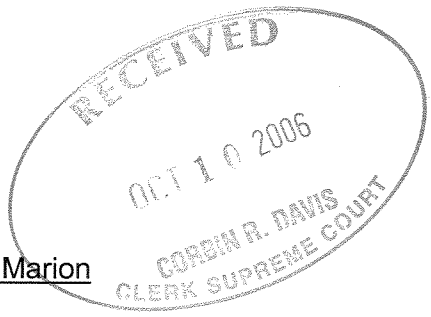
1906-1972

October 9, 2006



Corbin R. Davis, Clerk
Michigan Supreme Court
925 West Ottawa St.
P.O. Box 30052
Lansing, MI 48909

Re: Highland-Howell Development Co., LLC v Township of Marion
Supreme Court Docket No. 130698;
Court of Appeals Docket No. 262437
Michigan Tax Tribunal Docket No. 307906

Dear Mr. Davis:

Enclosed for filing are the following documents in reference to this case:

1. Amicus Curiae Brief of the Michigan Townships Association (original and 23 copies; and per your request, an electronic version of the brief).

2. Proof of Service

Thank you for your assistance with this filing. Please contact me if you have any questions.

Sincerely,

BAUCKHAM, SPARKS, ROLFE,
LOHRSTORFER & THALL, P.C.

Craig A. Rolfe

CAR/kmb
enc.
cc: Kathleen McCree Lewis, Attorney for Appellant
Richard Bisio, Attorney for Appellant
Neil H. Goodman, Attorney for Appellee
G. Lawrence Merrill, Executive Director, Michigan Townships Association
David W. Cherron, Attorney for Amicus Curiae Real Property Law Section of State Bar of Michigan
Gregory L. McClelland, Attorney for Amicus Curiae Michigan Association of Home Buildings
John D. Pirich, Attorney for Amicus Curiae Michigan Chamber of Commerce